



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: FEBRUARY 23, 2023

IN THE MATTER OF:

Appeal Board No. 627001

PRESENT: JUNE F. O'NEILL, MEMBER

In Appeal Board Nos. 627000, 627001, the Appeal Board has determined to reopen and reconsider the combined decision of the Administrative Law Judge, filed August 10, 2022, insofar as the decision sustained the initial determinations, reducing the weekly benefit rate from \$234.00 to \$178.00 in Pandemic Unemployment Assistance (PUA benefits), effective March 9, 2020, based on claimants net earnings; and charging the claimant with an overpayment of \$3,808.00 in PUA benefits recoverable pursuant to § 2102 (h) of the

Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and 20 CFR § 625.14 (a).

In Appeal Board No. 625286, the Commissioner of Labor appeals from the combined decision of the Administrative Law Judge filed August 10, 2022, insofar as the decision overruled the initial determination charging a civil penalty of \$571.20 on the basis that the claimant made a willful misrepresentation to obtain benefits.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There was an appearance by the claimant.

Our review of the record reveals that the case should be remanded to hold a further hearing. The record was not sufficiently developed as to the calculation of the claimant's PUA benefit rate as well as the purported wilful misrepresentation. The parties should have another opportunity to submit

additional testimony and other evidence on these issues.

Initially, in addition to the self-employment earnings, it appears that the claimant may have had further earnings in covered employment that might be utilized to calculate her benefit rate. At the further hearing, the claimant will offer additional testimony and evidence as to her earnings from all covered employment and self-employment in 2019, including where or for whom she worked in 2019, and her earnings in each quarter of 2019. Any documentary evidence, in furtherance of such testimony, including but not limited to 2019 W-2 statements, 2019 income tax returns (State and Federal), pay stubs, and bank statements, shall be produced at hearing for entrance into the record.

The Commissioner of Labor should appear and provide a first-hand witness to testify as to the claimant's PUA application. The Commissioner's witness and the claimant will offer testimony regarding the claimant's application for PUA benefits in 2019, including the precise questions asked of the claimant via the telephone, the claimant's potential and actual responses, whether the responses could be changed, whether the responses were verified for accuracy by the claimant, and what guidance was offered to the claimant regarding how to respond, what to do if she had questions, and any warnings as to potential penalties for inaccuracies. Any documentary evidence in furtherance of such testimony, including the actual PUA telephone application questions, shall be produced at hearing for entrance into the record.

Furthermore, the Commissioner's witness will offer testimony as to method for determining the claimant's benefit rate when the claimant had earnings in both covered employment and self-employment in 2019.

Now, based on the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard;

and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issues, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

JUNE F. O'NEILL, MEMBER